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Filing date: **06/09/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91177234
Party	Plaintiff Cardinal Health 303, Inc.
Correspondence Address	Joseph R. Dreitler Bricker & Eckler LLP 100 S. Third Street Columbus, OH 43215-4291 UNITED STATES mtrue@bricker.com
Submission	Plaintiff's Notice of Reliance
Filer's Name	Mary R. True
Filer's e-mail	trademarks@bricker.com
Signature	/Mary R. True/
Date	06/09/2009
Attachments	Giometti Notice_pdf (1).pdf (25 pages)(873289 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

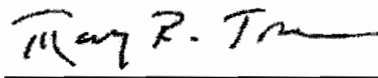
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|------------------------------|---|------------------------------|
| 1. CARDINAL HEALTH 303, INC. | : | |
| Opposer | : | |
| v. | : | Opposition No.: 91-177,234 |
| THE ALARIS GROUP, INC. | : | |
| Applicant | : | |
| 2. CARDINAL HEALTH 303, INC. | : | |
| Opposer | : | |
| v. | : | Opposition No.: 91-177,365 |
| THE ALARIS GROUP, INC. | : | |
| Applicant | : | |
| 3. CARDINAL HEALTH 303, INC. | : | |
| Opposer | : | |
| v. | : | Opposition No.: 91-177,366 |
| THE ALARIS GROUP, INC. | : | |
| Applicant | : | |
| 4. CARDINAL HEALTH 303, INC. | : | |
| Opposer | : | |
| v. | : | Opposition No.: 91-177,367 |
| THE ALARIS GROUP, INC. | : | |
| Applicant | : | |
| 5. CARDINAL HEALTH 303, INC. | : | |
| Petitioner | : | |
| v. | : | Cancellation No.: 92-048,172 |
| THE ALARIS GROUP, INC. | : | |
| Registrant. | : | |

NOTICE OF RELIANCE PURSUANT TO 37 C.F.R. § 2.122(e)

Opposer /Petitioner Cardinal Health 303, Inc., gives notice of its reliance on the attached Declaration of Richard Giometti and supporting exhibits, which are being submitted and relied upon to show the ways in which products and services bearing the Alaris trademark are marketed, promoted and sold to companies in the health care industry.

Dated: June 9, 2009

Respectfully submitted,

By: 

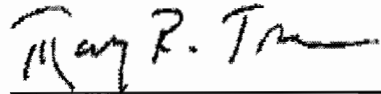
Joseph R. Dreitler
Mary R. True
BRICKER & ECKLER LLP
100 S. Third Street
Columbus, Ohio 43215
Telephone: (614) 227-2347
Facsimile: (612) 227-2390
Email: jdreitler@bricker.com
mtrue@bricker.com

Attorneys for Opposer
Cardinal Health 303, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served upon the following attorney
of record for Applicant by electronic and First Class Mail, this 9th day of June 2009:

Kristine Boylan
Merchant & Gould
3200 IDS Center
80 South 8th Street
Minneapolis, Minnesota 55402
kboylan@merchantgould.com

A handwritten signature in black ink, appearing to read "Mary R. True", written over a horizontal line.

Mary R. True

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

1. CARDINAL HEALTH 303, INC.	:	
	:	
Opposer	:	
	:	
v.	:	Opposition No. 91-177,234
	:	
THE ALARIS GROUP, INC.	:	
	:	
Applicant	:	
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Opposer	:	
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THE ALARIS GROUP, INC.	:	
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	:	
THE ALARIS GROUP, INC.	:	
	:	
Applicant	:	

5. CARDINAL HEALTH 303, INC.	:	
	:	
Petitioner	:	
	:	
v.	:	Cancellation No. 92-048,172
	:	
THE ALARIS GROUP, INC.	:	
	:	
Registrant	:	

STIPULATED TESTIMONY OF RICHARD GIOMETTI

I, Richard Giometti, state that as a witness for Opposer/Petitioner, if called I would testify as follows:

1. I am the Vice President, Direct Sales Management, CMP Administrative, Cardinal Health 303, Inc. San Diego, CA, and have held this position since August 2008.

2. I have been employed by Cardinal Health 303, Inc. San Diego, CA and its predecessors in interest (collectively the "Company") since 1986.

3. I have held the following positions at Cardinal Health 303, Inc. San Diego, CA and its predecessors in interest:

- a. Group Vice President, Midwest IPS
- b. Senior Vice President, Southeast IPS
- c. Vice President of National Accounts, Alaris Products

4. As Vice President of Direct Sales Management and based upon my experience at the Company, I am very familiar with how Alaris products and services are sold. Alaris medical products and services - and the replacement parts and support services therefore - are sold in a variety of ways.

5. Alaris products and services are sold in several ways. The Company has a direct sales force of ninety (90) people located throughout the United States. Our direct sales force meets with representatives from hospital facilities of all sizes to promote and sell Alaris products and services through in person sales presentations, product demonstrations, and webcasts.

6. Participation at Trade Shows is an extremely important way in which the Company promotes and sells its Alaris medical products and services. Trade shows are widely attended by members of the various organizations, including nurse clinicians, nurse executives, hospital pharmacists, and hospital executives. Participants at the INS and ONS shows would include nurses practicing in the home healthcare industry. Attendance at trade shows varies by the size of the organization, and ranges from close to 20,000 for the largest shows to around 1,000 for smaller groups. Examples of annual trade shows where Alaris products have been promoted since 1997 are the following:

- AACN/NTI American Association of Critical Care Nurses/ National Teaching Institute
- INS Intravenous Nurses Society
- ONS Oncology Nursing Society
- HIMSS Healthcare Information and Management Systems Society
- AONE American Organization of Nurse Executives
- AORN Association of Operating Room Nurses
- ACHE American College of Healthcare Executives

7. Group Purchasing Organizations (“GPO”) are the organizations with which the Company directly contracts for the sale of Alaris products and services into hospital facilities. Specific members of the Company’s direct sales force are assigned to work with each GPO, and provide the GPOs with product information, pricing, costs to implement the various Alaris systems and other supporting materials. Every hospital

belongs to a GPO, and each GPO has more than 2000 member hospitals. The Company attends the following annual GPO meetings to promote and display its Alaris products and services:

Premier
VHA (Veterans Hospital of Am)
UHC University Health Consortium
Med Assets
HPG Healthcare Purchasing Group
ASHP Am Soc Hospital Pharmacists

8. At trade shows potential customers are not only provided with information from the sales force, but brochures, white papers and other promotional materials (such as pens and coffee mugs). The Company also does “door drops” at trade shows, in which it places invitations to daily educational presentations that will be held at the Company’s booth on the hotel room doors of the attendees. These presentations are generally given by members of the particular organization holding the trade show in which they talk about their experience with Alaris products or about general topics of interest to conference attendees.

9. Promotional mailers to potential customers are also important means of introducing customers to new Alaris products and services. Attached is a promotional mailer (Ex. A) from June 1997 promoting both the trade name Alaris and the Alaris Smartsite line of products. This promotional mailer was sent to every hospital in the United States as well as many nursing homes and long and short term care facilities. When a new product is launched there are several mailers that are produced promoting the Alaris product which are sent to potential customers. For example, attached as

Exhibit B is a fifth mailer that was sent out to all U.S. hospitals in November 1997 promoting the then new Alaris Smartsite needleless system.

10. When a new Alaris product or service is about to be launched, the Company prepares an overall plan for the sales, promotion and marketing of that new product or service. For example, when the new Alaris Medley pulse oximeter product was about to be launched in the year 2000 for use in conjunction with the Alaris Orion infusion pump, the Medley Launch Plan was prepared and used for introducing and selling the product. Attached as Exhibit C is the Medley Launch Plan with which I am personally familiar. As indicated in Exhibit D, there were numerous sales support materials connected with this launch that went to thousands of potential customers all over the U.S., such as a product brochures, videos, price lists, catalogs, wall posters, product folders, products samples and informational white papers.

11. In addition, Alaris products are promoted and sold on the website, cardinal.com and potential customers can view photos of the products and brochures online, and purchase certain disposable items from the E-catalog on the site (see Exhibit E). Indeed, webcasts and other website-originated marketing materials are becoming increasingly important tools for our sales force. In the past ten years, the Company has gone from using 100% print brochures to less than 50% printed materials, and the cardinal.com website receives 1.2 million hits per month.

12. The Company offers many services under the ALARIS name, including technical support for its products, clinical support for practitioners, biomedical and other training seminars for clinical personnel, onsite instrument repairs, preventative maintenance programs, and consulting services to help customers implement and manage

their medication safety system. These services are an essential part of any Alaris infusion system package and represent an ongoing source of revenue and point of customer contact for the Company.

13. Alaris products can be found in health care facilities throughout the United States and in Europe. Among the Company and its competitors in the infusion market (Hospira, Baxter, B.Braun, Sigma and MedFusion), Alaris is the market share leader.

14. The renown and reputation of Alaris products in the healthcare community is further demonstrated by the consistently high ratings given Alaris products by the ECRI Institute, a respected independent testing group. A copy of a recent ECRI article on Alaris products is attached as Exhibit F.

I declare under the penalties of perjury that the foregoing statements are true to the best of my information, knowledge and belief.

06/04/09
Date

Richard Giometti
Richard Giometti



TO: Officers
Marketing Group
U. S. Sales Force

FROM: Brad Lee and Derek Evans

DATE: June 10, 1997

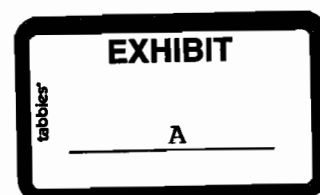
SUBJECT: Promotional Mailers

Attached are four mailers that will be sent to several key contacts in all domestic hospitals and targeted alternate site facilities over the next four months. The initial mailer was sent out this week with one mailer per month to follow.

The four mailers will emphasize the customer's need to address needlesticks, latex allergy exposure, and reduce the complexity of their needleless system. The promotion is designed to create awareness of the SmartSite product line and enhance the sense of urgency in moving to a system that offers the many advantages of SmartSite. Upon request, recipients will also be provided with samples of the product line.

Also, enclosed is the mailer that went to all PREMIER accounts announcing the dual-source agreement.

CHAL00444



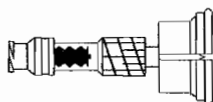
ALARIS Medical Systems, Inc.
Corporate Office
10221 Wateridge Circle
San Diego, CA 92121-2733
(619) 458-7000
Fax (619) 458-7760
www.alarismed.com



*Meet the newest member of the
SmartSite® Needle-Free family !*



CHAL00445



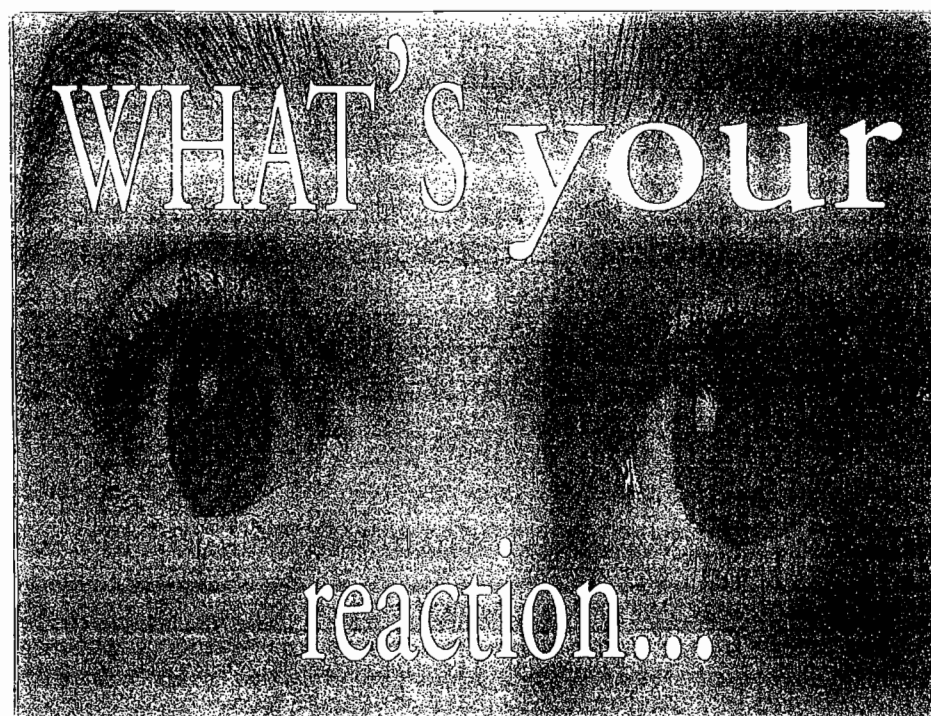
Vial Access Device

Model 2205E

Dear Customer,

We are pleased to announce our SmartSite® Needle-Free family is expanding to include a vial access device. Our new latex-free, closed system has a flush access port for easy swabbing, syringe connection, and vial-closure compatibility. The model 2205E securely attaches to the top of 13mm and 20mm vials. Ordering information is available through ALARIS customer service. Please contact 800-482-4822 (Canada 800-387-8309).





CHAL00447

TO LATEX?

CHAL00448

*“[Latex] exposure may occur
when latex antigens are*

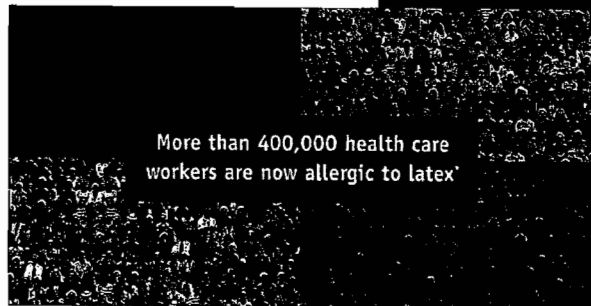
INJECTED

*directly through latex-covered
ports in IV tubing.*”*

Allergic reactions to latex range from rashes, hives and itching, to serious instances of anaphylactic shock.

Because of increasing concerns about latex intolerance, for both patients and caregivers, the

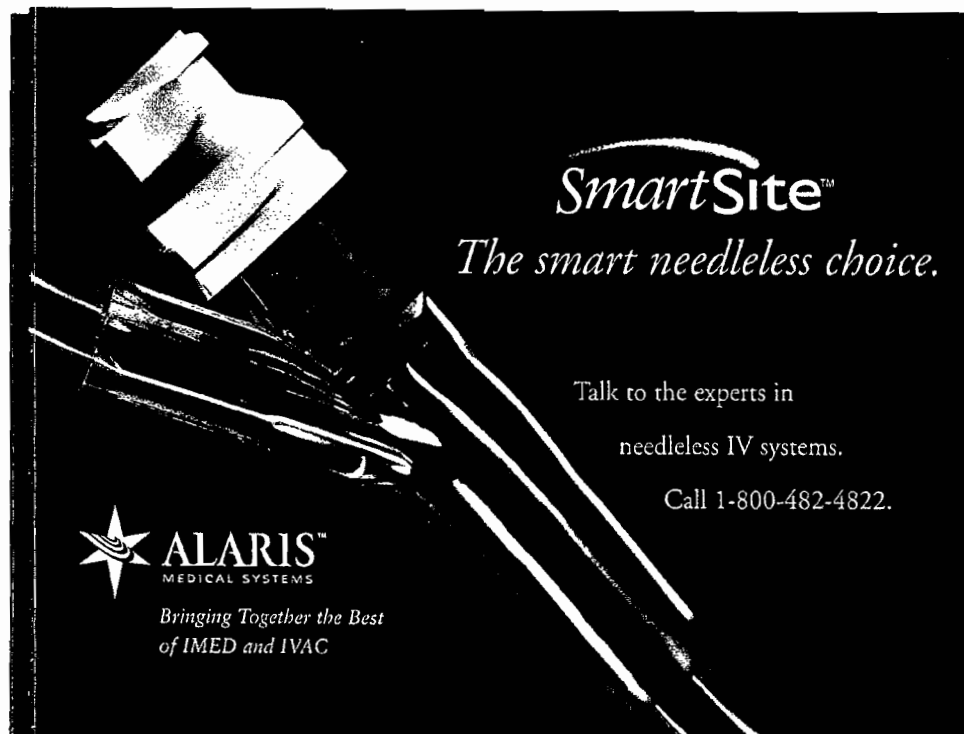
SmartSite™ needleless system was designed to be completely latex-free.



* Contemporary Pediatrics,
Vol. 13, No. 5, May 1996, Page 91.


By *eliminating latex*

and the need for needles, the SmartSite system can enhance safety for caregivers and patients. It also reduces exposure to the excessive costs associated with needlestick injuries and adverse latex reactions. The SmartSite system is a fully-integrated needleless system offering a complete range of IV set configurations. It can help your facility *increase compliance* with needleless policies. Because there are no cannulas, caps or add-on components to purchase, the SmartSite system can *reduce your needleless costs* by up to 30%. With no needles, caps or extra pieces to assemble, the SmartSite system is unmatched for *ease of use*. Put it all together, and the SmartSite system becomes your smartest choice for *needleless standardization*.



SmartSite™
The smart needleless choice.

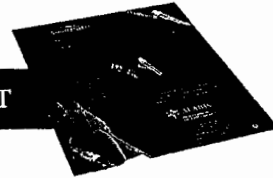
Talk to the experts in
needleless IV systems.
Call 1-800-482-4822.

 **ALARIS™**
MEDICAL SYSTEMS
*Bringing Together the Best
of IMED and IVAC*

Stick With Us And You Won't Get Stuck. Complete this card and we'll send you a free sample kit with the SmartSite™ system's smartest components. For more information on the SmartSite system, talk to the experts in needleless IV systems. Contact your ALARIS Medical Systems representative or call direct at 1-800-482-4822.



YES! PLEASE SEND ME A FREE SAMPLE KIT



☐ HOSPITAL ☐ HOMECARE ☐ LONG TERM CARE ☐ AMBULATORY SURGERY

NAME _____

HEALTHCARE FACILITY _____

ADDRESS _____

CITY/STATE/ZIP _____



NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES

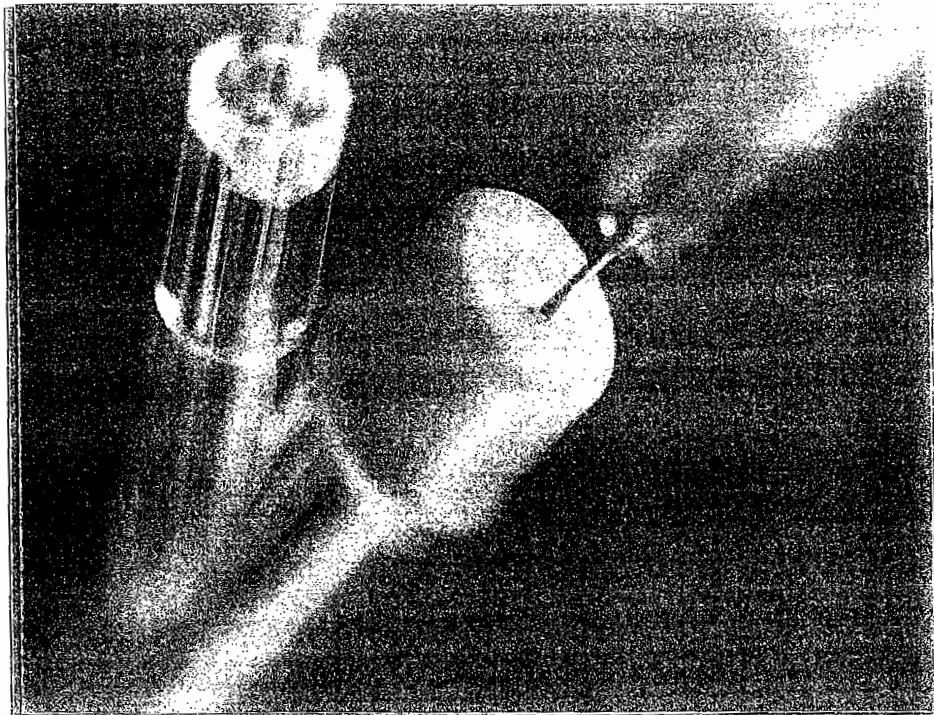
BUSINESS REPLY MAIL

FIRST-CLASS MAIL PERMIT NO. 200176 SAN DIEGO, CA

POSTAGE WILL BE PAID BY ADDRESSEE

MARKETING DEPARTMENT
ALARIS MEDICAL SYSTEMS, INC.
10221 WATERIDGE CIR
SAN DIEGO CA 92121-9899





CHAL00455



WORLDWIDE HEADQUARTERS
10221 WATERIDGE CIRCLE
SAN DIEGO, CALIFORNIA 92121-2733

BULK RATE
U.S. POSTAGE
PAID
SAN DIEGO, CA
PERMIT 751

CHAL00456

NEWS FLASH

**ALARIS
MARKETING**

Advantage



To: Distribution
From: Brad Lee
Date: November 10, 1997
Subject: SmartSite Needleless Cost Mailer
PIB #: 1002

Attached is the fifth and final mailer that was distributed to materials managers, directors of nursing, directors of infection control, CFOs, and CEOs in all U.S. hospitals. The mailer is designed to emphasize the significant cost savings that can be achieved with the SmartSite needleless system in comparison to all of our major competitors.

This positioning provides SmartSite with a tremendous cost advantage in a market that is focused on reducing the costs associated with patient care. The SmartSite technology is a perfect example of our ability to provide technologically advanced products which also reduce our customer's overall healthcare expenditures.

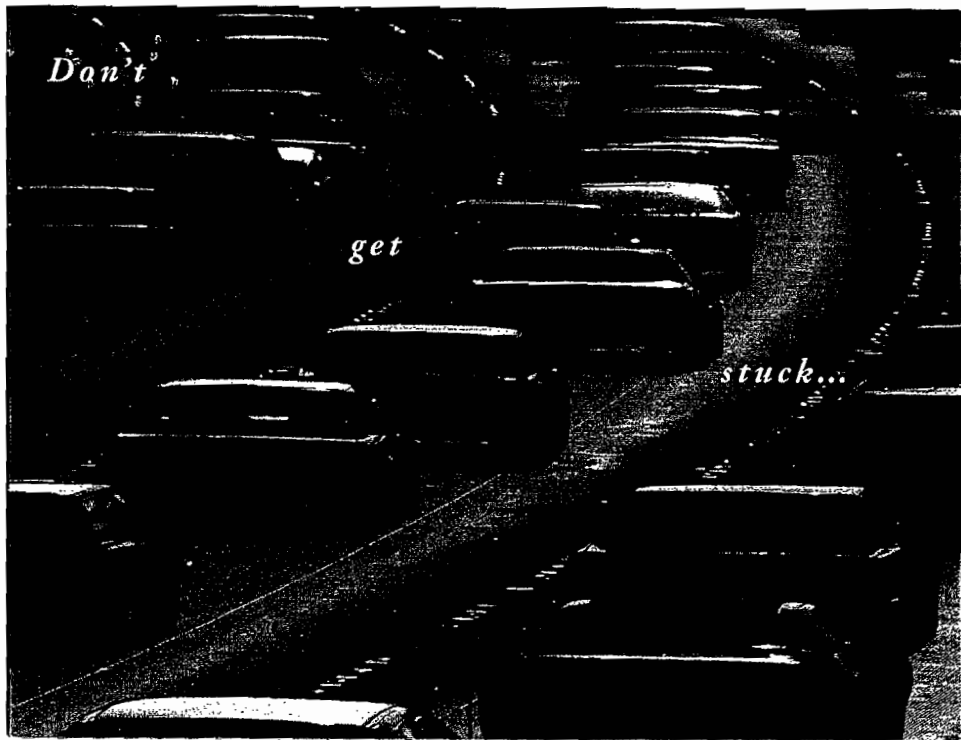
/mcc

Attachment

CHAL00224

EXHIBIT

B



CHAL00225